

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In Re: NEW YORK CITY ASBESTOS LITIGATION

Hon. Joan Madden
(Part 11)

This Document Relates To:

THE FOLLOWING PLAINTIFFS FROM THE WEITZ
& LUXENBERG MAY 2007 NYCAL *IN EXTREMIS*
CLUSTER:

FRANK BIANCO (Index No. 11546-06)
JAMES DIRECTOR (Index No. 115923-06)
KARL FELTEN (Index No. 114005-06)
HARVEY HELFAND (Index No. 117176-06)
CHRISTIAN HOLINKA (Index No. 114120-06)
JACK NACHT (Index No. 114274-06)
FREDERICK RITZER (Index No. 11328-06)
JOSEPH SACCOMANO (Index No. 113299-06)
ROBERT SHEPPARD (Index No. 117513-06)

**AFFIRMATION OF GREG A.
DADIKA, ESQ. IN OPPOSITION
TO PLAINTIFFS' MOTION FOR A
JOINT TRIAL**

GREG A. DADIKA, ESQ. an attorney duly admitted to practice law before the Courts of this State, affirms, under the penalties of perjury pursuant to CPLR R. 2106, that the following statements are true, except for those made upon information and belief, which we believes to be true:

1. Defendants ManorCare Health Services, Inc. (alleged to be a successor in interest to Central Scientific Company, a division of Cenco, Inc.) ("ManorCare"), Fisher Scientific International Inc. ("Fisher"), Baxter Healthcare, Inc. (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter") and VWR International, Inc. ("VWR") and Univar USA Inc. ("Univar") (collectively, the "Lab Supply Defendants") submit this affirmation in support of their opposition to plaintiffs' motion for a joint trial pursuant to CPLR §602(a). The Lab Supply Defendants are seeking an Order denying plaintiffs' request for a joint trial of the *Bianco, Director, Felten, Helfand, Holinka, Nacht,*

Ritzer, Saccomano and Sheppard cases; for an Order severing the *Holinka* case for a separate trial from the *Director, Felton, Helfand, Nacht, Ritzer, Saccomano and Sheppard* cases; and for such other and further relief as this Court may deem just and proper.

2. The within Affirmation has been prepared upon information and belief, based upon the files for these matters maintained in my office, which I believe to be true and accurate.

3. The nine above-captioned cases are part of the May 2007 *In Extremis* trial group, established pursuant to the Case Management Order for the New York City Asbestos Litigation. According to the lists of remaining defendants circulated by Weitz & Luxenberg at the June 15, 2007 case management conference, there are over forty separate defendants remaining in these cases. (See **Exhibit A** attached hereto).

4. The Lab Supply Defendants are defendants in only the *Holinka* case.

5. On June 25, 2007, by order to show cause, plaintiffs' counsel moved this Court for a joint trial of all nine of the above-captioned cases.

6. Plaintiff Christian Holinka was diagnosed with mesothelioma in September 2006. He is still alive. He submitted Responses to Interrogatories and testified on three different occasions in an individually filed law suit in which he alleged asbestos-related injuries. His interrogatories and deposition transcripts allege that he was exposed while performing laboratory research and graduate studies in the various colleges and universities in New York and California from 1956 to 1989. He alleges exposure to asbestos from Bunsen burner pads and heat mittens. Generally, he testified that Van Waters & Rogers, Fisher Scientific, American Scientific and Cenco were suppliers of laboratory products during the time period that he worked at some of his job sites. Specifically, Dr. Holinka alleges to have used products at the following eleven locations:

- United States Army, Fort Sam Houston in Texas; January to February, 1957;
- United States Army, 98 General Hospital in Germany; March 1957 to July 1959;
- Booth Memorial Hospital, Queens, New York; Late 1959 until early 1960;
- Research laboratory, University of California, Berkley; Spring 1960 to mid-1962, and January to August 1964;
- Undergraduate laboratories, University of California; January 1960 to Summer 1962;
- Hunter College, New York; Fall 1962 until Spring 1963;
- Graduate research laboratory, University of California Berkley; August 1964 until August 1966;
- SUNY Stony Brook: August 1971 until July 1974;
- Columbia University; August 1971 until July 1974;
- University of Southern California at Los Angeles; August 1974 until July 1977; and
- Mt. Sinai Hospital School of Medicine: August 1977 until July 1989

7. Dr. Holinka's case presents unique exposures because they allegedly occurred in a laboratory environment, not in a construction or installation based environment. As such, Dr. Holinka's case is not only unique to the May 2007 In-Extremis cluster, it is unique to the New York City asbestos litigation.

8. ManorCare, Fisher, Baxter, VWR and Univar are defendants only in the *Holinka* matter, and are not named in any of the other cases that plaintiff seeks to consolidate before this

Court. In addition, counsel for ManorCare, Baxter, VWR and Univar do not represent any other defendants in the proposed trial group.

9. As asserted in plaintiffs' Affirmation in support of this motion, Frank Bianco is deceased. He was exposed while in the US Navy from 1955 to 1959 and while working as a residential plumber from 1960 to 1972. He alleges exposure to boilers, pumps and valves. He was exposed on the USS Intrepid and then at various residences.

10. Similarly, plaintiffs contend that James Director is deceased. He was exposed to wood fire doors and joint compound from 1969 to 1976. His exposure sites range from public schools to hospitals to powerhouses.

11. Plaintiffs also affirm that Frederick Ritzer is deceased. He was a lifetime plumber who alleges exposure beginning in or about 1957. His exposure sites include many commercial buildings in the NY metropolitan area. He alleges exposure to rope, valves, packing and gaskets.

12. Joseph Saccomano is deceased. He was exposed as a sheet metal worker from 1962 until 1983, and as a home inspector thereafter. He alleges exposure to pipe insulation, pumps valves, boilers, tiles, roofing and siding. His exposure sites range from powerhouses to airports to hospitals.

13. According to plaintiffs, Jack Nacht is alive. Plaintiffs contend that Mr. Nacht was exposed through his activities as owner of a retail flooring company from 1946 to 1977. He alleges bystander exposure to flooring products at commercial and residential jobsites in Long Island and Queens, as well as from asbestos-containing pipe covering related to the boiler in the basement of his store.

14. Similarly, Robert Sheppard is alive. Plaintiffs contend that Mr. Sheppard was exposed to friction products, building electrical equipment and ceiling tile. He was exposed to

friction products at his residences, in the United States military, as well as while working in the recording industry.

15. Karl Felten is alive. Based upon plaintiffs' affirmation in support, Mr. Felton was exposed while working in the boiler room/power plant of Mt. Sinai Hospital from 1958 to 1997. Mr. Felton's exposures range from asbestos cement to pipe covering, gaskets, boilers, air conditioning units, chillers, turbines and pumps.

16. As to Harvey Helfand, plaintiffs assert that he is alive. He was exposed as a typesetter in the 1950s and while involved in construction work between 1951 and 1970s. While working as a type setter, he alleges exposure to linotype machine and while in the construction field, joint plaster, ceiling tile and floor tile. Importantly, Plaintiff Helfand testified at his deposition that his alleged exposure continued into the year 2006. (See **Exhibit B** attached hereto).

17. There are several issues that are specific to the *Holinka* case that support defendant's position that it should not be tried in conjunction with the other cases in this group, but should each be tried separately.

18. First, the *Holinka* matter was assigned to this Court with the specific condition from the Special Master that it could not be scheduled for trial prior to August 2007, due to certain outstanding discovery issues between the parties. (See **Exhibit C** attached hereto).

19. Those outstanding discovery issues were raised by counsel with Your Honor during the status conference on Friday, June 15, 2007, at which time Plaintiff's counsel acknowledged that the *Holinka* matter could not go to trial prior to August. As indicated in that conference, the parties have agreed to an extended discovery schedule as follows:

July 5, 2007: Deposition of Dr. Strauchen to have been completed; however, plaintiffs have still not yet provided transcripts of Dr. Strauchen's prior testimony.

July 18, 2007: Deadline for Defendants to serve deposition notices for plaintiff's fact witnesses; Defendants to serve fact witness lists; and Independent Medical Exam of plaintiff to be completed;

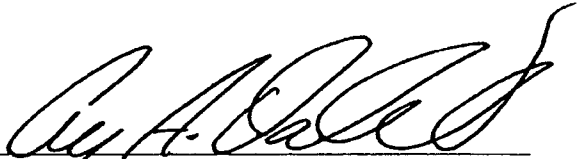
July 30, 2007: Defendants to serve expert witness reports; and

August 1, 2007: Defendants to serve exhibit and expert witness lists.

20. In addition, and as more fully detailed in the attached Memorandum of Law, the diverse nature of the plaintiffs' respective professions, the multitude of the exposure sites, the expansive times period involved, the various diseases from which the plaintiff and decedents suffered, and the disparity of the types and sources of alleged asbestos exposure require that these cases be tried separately. Trying the *Holinka* case with the other eight cases will be highly prejudicial to the Lab Supply Defendants.

WHEREFORE, the Laboratory Supply Defendants respectfully request an Order pursuant to CPLR § 602(a) denying plaintiffs' request for a joint trial; an Order pursuant to CPLR § 603 severing the cases for separate trial; and for such other severing the *Holinka* case for a separate trial from the *Director*, *Felton*, *Helfand*, *Nacht*, *Ritzer*, *Saccomano*, *Bianco* and *Sheppard* cases and further relief as this Court may deem just and proper.

Dated: New York, New York
July 16, 2007


Greg A. Dadika

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Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 0850
(609) 987-0050
Attorneys for Defendant
ManorCare Health Services, Inc.

Exhibit A

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MAY 2007 - HON. MADDEN TRIAL GROUP

NAME	STATUS & OCCUPATION	EXPERTS	REMAINING DEFS.
FRANK BIANCO File #: 203268 Index #: 115546-06	MAY 2007 DECEASED -- MESO ESTATE REP: CATHARINA (WIFE) DOB: 1/6/38 DOD: 11/23/06 AGE AT DEATH: 68 <u>EXPOSURE:</u> * 1955-59: FIREMAN; USS INTREPID, BNY * 1960-1970'S: RESIDENTIAL SITES	EXPERTS Path - POHL Pulm - ROTHMAN	REMAINING DEFS. A.O. SMITH AMER. STANDARD AMCHEM BELL & GOSSETT BLACKMAN BURNHAM CLEAVER BROOKS CRANE CO. FAIRBANKS CO. GOULDS MANSFIELD O.I. PEERLESS SID HARVEY SUPERIOR UNION CARBIDE WEIL McLAIN
JAMES DIRECTOR File #: 203327 Index #: 115923-06	MAY 2007 DECEASED -- MESO ESTATE REP: Pending Estate Set Up DOB: 4/10/54 DOD: 5/18/07 AGE AT DEATH: 53 <u>EXPOSURE:</u> * mid 1960's to 1980's: CARPENTER; DIRECTOR DOOR INDUSTRIES INC., (FAMILY BUSINESS) - VARIOUS NYC HOSPITALS, EDUCATIONAL & RESIDENTIAL FACILITIES; SHOREHAM PWHS.	EXPERTS Path - Gil Pulm - Moline	ALGOMA AMCHEM BLACKMAN KAISER THAN UNION CARBIDE WESTINGHOUSE

KARL FELTEN File #: 203219 Index # 114005-06	May 2007 LIVING -- MESO ESTATE REP: N/A DOB: 4/19/32 DOD: N/A AGE: 75 EXPOSURE: • 1953: MECHANIC; MT. SINAI HOSPITAL (Machine Shop) • 1954-58: MECHANIC; U.S. AIRFORCE (Germany) • 1958-1991: MT. SINAI HOSPITAL (Power Plant & Engine Room)	Path - GIL Pulm - KRELLENSTEIN	AMCHEM A.W. CHESTERTON BELL & GOSSETT BYRON JACKSON CARRIER COMPUTDYNE CRANE CO. ERIE CITY/ZURN GOODYEAR GOULDS MORSE DIESEL O.I. UNION CARBIDE WESTINGHOUSE YORK
HARVEY HELFAND File #: 203394 Index # 117176-06	May 2007 LIVING -- MESO ESTATE REP: N/A DOB: 11/18/35 DOD: N/A AGE: 71 EXPOSURE: • 1950's - 2006: PRINTER APPRENTICE/PRESSMAN; UNITED OSSET CORP., RAMAPO LITHOGRAPH, MUREE PRES. SERVICE OFFSET, H&H MULTICOLOR, SPECTRUM PRINTING • 1977-1979: RESIDENTIAL CONSTRUCTION IN & AROUND NYC AREA	Path - DIKMAN Pulm - SCHACTER	AMCHEM AMTICO CERTAUNTEED HEIDELBERG KAISER KENTILE MANNINGTON O.I. UNION CARBIDE

<p>CHRISTIAN HOLINKA File #: 203330 Index #: 114120-06</p>	<p>May 2007 LIVING -- MESO ESTATE REP: N/A DOB: 7/7/37 DOD: N/A AGE: 69 EXPOSURE: • 1959-1960: LAB TECHNICIAN; NY HOSPITAL CTR OF QUEENS • 1960-1966: CHEMIST; UC BERKELEY (Physiology Research Lab) • 1971-1974: CHEMIST; COLUMBIA UNIV; COLUMBIA PRESBYTERIAN HOSP.; SUNY STONYBROOK (Biological Science Lab) • 1974-1977: CHEMIST; USC (Biological Lab), Los Angeles, CA • 1977-1989: CHEMIST; MT. SINAI SCHOOL OF MEDICINE</p>	<p>Path - STRAUCHEN Pulm - MOLINE</p>	<p>AMER. SCIENTIFIC AMCHEM CENCO FISCHER SCIENTIFIC O.I. UNION CARBIDE VWR</p>
<p>JACK NACHT File #: 203331 Index #: 114274-06</p>	<p>May 2007 LIVING -- MESO ESTATE REP: N/A DOB: 4/3/23 DOD: N/A AGE: 84 EXPOSURE: • 1946-1997: Dee-Jay Carpet; Self Employed</p>	<p>Path - STRAUCHEN Pulm - SALISBURY</p>	<p>AMCHEM AMTICO AZROCK GOODRICH KENTILE MANNINGTON O.I. UNION CARBIDE</p>

FREDERICK RUTZER File #: 203263 Index #: 111328-06	May 2007 DECEASED - MESO ESTATE REP: BARBARA W RITZER (WIFE) DOB: 5/1/39 AGE: 67 DOD: 9/4/06 EXPOSURE: • 1957-2006: PLUMBER/PIPEFITTER EXXON BLDG, PORT AUTHORITY BUS TERM, WTC, BELLEVUE HOSPITAL, HBO BLDG, TRUMP PROJECTS, PARKER TOWERS, HUNTER COLLEGE, YANKEE STADIUM et al., • 1966: STEAMFITTER, BUDWEISER PLANT, NEWARK, NJ	Path - GIL Pulm - SCHACTER	AMCHEM CRANE CO. FAIRBANKS CO. HERCULES O.I. UNION CARBIDE
JOSEPH SACCOMANO File #: 203354 Index #: 1113299-06	May 2007 DECEASED - MESO ESTATE REP: DENISE NAGY (CHILD) DOB: 3/17/77 DOD: 11/28/06 AGE: 69 EXPOSURE: • 1962-1983: JOURNEYMAN/SHEETMETAL WORKER NORTHPORT, ASTORIA, 14 TH St. PWHS, RAVENSWOOD, WTC, NYC HOSPITALS - INCL., SLOAN KETTERING, NYU, KINGSBRIDGE VA HOSPITAL (BRONX, NY), & TRUMP TOWERS, JFK AIRPORT, LINCOLN CTR. • 1983-1996: BUILDING INSPECTOR, VARIOUS RESIDENTIAL & COMMERCIAL BLDGS, BROOKHAVEN, NY	Path - ZWANG Pulm - MOLINE	A.O. SMITH AMER. STANDARD AMCHEM BELL & GOSSETT BURNHAM CARRIER CERTAINTTEED CON EDISON CRANE CO. DUNKIRK KENTILE LILCO UNION CARBIDE WEIL McLAIN

ROBERT M. SHEPPARD File # 203436 Index # 117513-06	May 2007 LIVING - MESO ESTATE REP: N/A DOB: 8/16/58 DOD: N/A AGE: 48 Exposure: * 1978: WELDER/MAINTAINENCE STAR DYNAMIC CORP., 100 OUTWATER LANE, GARFIELD, NJ * 1980: WELDER/MAINTAINENCE AEROLITE ELEC. CORP., 2207 SUMMIT AVE, UNION, NJ * 1982-1983 & 1985-1987: ENGINEER; RPM STUDIOS/A&R STUDIOS	Path - DIKMAN Pulm - SCHACTER Econ - BRIAN P. SULLIVAN	AMCHEM 3M SQUARE D UNION CARBIDE
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Exhibit B

Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

<p>1 SUPREME COURT: ALL COUNTIES 2 WITHIN THE STATE OF NEW YORK</p> <p>3</p> <p>4 IN RE: NEW YORK CITY : ASBESTOS LITIGATION :</p> <p>5 : DEPOSITION UPON This Document Applies To: : ORAL EXAMINATION : OF 6 HARVEY HELFAND : HARVEY HELFAND : (VOLUME II)</p> <p>7 ----- : 8 9</p> <p>10 TRANSCRIPT of the deposition of 11 HARVEY HELFAND, called for Oral Examination in the above 12 entitled action, said deposition being taken pursuant to 13 Rules governing Civil Practice in the Courts of New York, 14 by and before KERRY D. HALPERN, a Notary Public and 15 Shorthand Reporter of the State of New York, at the 16 residence of Mr. Helfand, 19 Birmingham Lane, Jamesburg, 17 New Jersey 08831, on Monday, January 29, 2007, commencing 18 at 11:15 a.m.</p> <p>19 20 21 22</p> <p>23 Priority-One Court Reporting Services 899 Manor Road Staten Island, New York 10314 24 (718) 983-1234 25</p>	<p style="text-align: right;">Page 126</p> <p>1 APPEARANCES: 2 FOR THE PLAINTIFF: 3 WEITZ & LUXENBERG, P.C. 4 BY: DAVID CHANDLER, ESQ. 5 180 Maiden Lane 6 17th Floor New York, New York 10038</p> <p>7 FOR THE DEFENDANT ROBERT A. KEASBEY: 8 9 WEINER LESNIAK LLP BY: MATTHEW R. STRAUS, ESQ. 888 Veterans Memorial Highway Hauppauge, New York 11788</p> <p>10 FOR THE DEFENDANT CBS: 11 12 MALABY, CARLISLE & BRADLEY, LLC BY: EVA WAYNE, ESQ. 150 Broadway New York, New York 10038</p> <p>13 FOR THE DEFENDANT INGERSOLL RAND: 14 PEHLIVANIAN, BRAATEN & PASCARELLA, LLC: BY: MICHELE MITTLEMAN, ESQ. 2430 Route 34 Manasquan, New Jersey 08736</p> <p>15 FOR THE DEFENDANT MANNINGTON MILLS: 16 HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP BY: JOHN T. FOJUT, ESQ. 40 Paterson Street Box 480 New Brunswick, New Jersey 08903</p> <p>17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 125</p> <p>1 IT IS HEREBY STIPULATED AND AGREED 2 by and between the attorneys for the respective parties 3 hereto that filing, sealing and certification of the 4 within Examination Before Trial be waived; that all 5 objections, except as to form, are reserved to the time 6 of trial.</p> <p>7 IT IS FURTHER STIPULATED AND AGREED 8 that the transcript may be signed before any Notary 9 Public with the same force and effect as if signed before 10 a Clerk or Judge of the Court.</p> <p>11 IT IS FURTHER STIPULATED AND AGREED 12 that the within examination may be utilized for all 13 purposes as provided by the CPLR and Part 221 of the 14 Uniform Rules for the Conduct of Depositions.</p> <p>15 IT IS FURTHER STIPULATED AND AGREED 16 that all rights provided to all parties by the CPLR shall 17 not be deemed waived and the appropriate sections of the 18 CPLR shall be controlling with respect thereto.</p> <p>19 IT IS FURTHER STIPULATED AND AGREED by and 20 between the attorneys for the respective parties hereto 21 that a copy of this Examination shall be furnished, 22 without charge, to the attorney representing the witness 23 testifying herein. 24 25</p>	<p style="text-align: right;">Page 127</p> <p>1 FOR THE DEFENDANT HEIDELBERG USA, INC.: 2 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP BY: CHRISTINE MONTENEGRO, ESQ. 3 1633 Broadway 4 22nd floor New York, New York 10019</p> <p>5 FOR THE DEFENDANT KENTILE FLOORS, INC.: 6 7 HARRIS BEACH PLLC BY: SARA MURPHY, ESQ. 805 Third Avenue 20th Floor New York, New York 10022</p> <p>8 FOR THE DEFENDANT KAISER GYPSUM: 9 DeCICCO, GIBBONS & McNAMARA, P.C. BY: MICHAEL J. SWEENEY, ESQ. 14 East 38th Street New York, New York 10016</p> <p>10 FOR THE DEFENDANT HARRIS: 11 12 HOLLAND & KNIGHT, LLP BY: RICHARD MENCHINI, ESQ. 195 Broadway, 25th Floor New York, New York 10007</p> <p>13 FOR THE DEFENDANT GOODRICH COMPANY: 14 15 SMITH STRATTON, WISE, HELTER & BRENNAN, LLP BY: OMAR CHAVEZ, ESQ. 2 Research Way Princeton, New Jersey 08540</p> <p>16 17 18 19 20 21 22 23 24 25</p>

1 (Pages 124 to 127)

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Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

Page 128		Page 130	
1	FOR THE DEFENDANT GENERAL ELECTRIC: FOR THE DEFENDANT FOSTER WHEELER:	1	
2		2	
3	SEDGWICK, DETERT, MORAN & ARNOLD, P.C.	3	
4	BY: DENNIS VEGA, ESQ.	4	
5	3 Gateway Center	5	
6	12th Floor	6	
7	Newark, New Jersey 07102	7	
8	FOR THE DEFENDANT AMERICAN BILTRITE:	8	
9	KUROWSKI, BAILEY & SHULTZ, LLC	9	
10	BY: ROBERT C. ANDERSON, ESQ.	10	
11	24 Bronze Pointe	11	
12	Swansea, Illinois 62226	12	
13	FOR THE DEFENDANT GEORGIA PACIFIC:	13	
14	MARKS, O'NEILL, O'BRIEN AND COURTNEY, P.C.	14	
15	BY: RACHAEL SNYDER, ESQ.	15	
16	Cooper River West	16	
17	6981 N. Park Drive, Suite 300	17	
18	Pennsauken, New Jersey 08110	18	
19	FOR THE DEFENDANT ANCHEN:	19	
20	FOR THE DEFENDANT CERTAINTIED:	20	
21	FOR THE DEFENDANT UNION CARBIDE:	21	
22		22	
23	ANDERSON, KILL & OLICK, P.C.	23	
24	BY: SANDRA STEINMAN, ESQ.	24	
25	1251 Avenue of the Americas	25	
	New York, New York 10020-1182		
Page 129		Page 131	
1	INDEX	1	MOVE TO STRIKE:
2		2	PAGE LINE
3	WITNESS: HARVEY HELFAND	3	213-3
4	EXAMINATION PAGE	4	213-6
5	MS. WAYNE 131	5	213-14
6	MS. MONTENEGRO 162	6	232-2
7	MR. ANDERSON 196	7	251-16
8	MR. FOJUT 229	8	
9	MS. MURPHY 236	9	
10		10	MARK FOR RULING:
11		11	PAGE LINE
12	EXHIBITS:	12	None
13	NUMBER DEFENDANT'S DESCRIPTION PAGE	13	
14		14	
15		15	
16		16	
17		17	
18		18	
19	QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:	19	
20	PAGE LINE	20	
21	None	21	
22		22	
23	INFORMATION TO BE SUPPLIED:	23	
24	PAGE LINE	24	
25	164-4	25	

2 (Pages 128 to 131)

Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

<p style="text-align: right;">Page 132</p> <p>1 HARVEY HELFAND, 2 having first been duly sworn, was 3 examined and testified as follows: 4 5 EXAMINATION 6 7 BY MS. WAYNE: 8 Q. Good morning, sir. 9 A. Good morning. 10 Q. We met last week. My name is Eva Wayne. 11 I am from the law firm of Malaby, Carlisle & Bradley, and 12 I will be asking you some more questions today. 13 A. Okay. 14 Q. After I am finished, some of the other 15 attorneys in the room may have some additional questions 16 for you. 17 Before we get started, I just want to 18 review a couple of the rules for today's deposition. 19 A. Okay. 20 Q. If you don't understand any question 21 that I ask you, please tell me that, and I will rephrase 22 the question for you. If you answer my question, I am 23 going to assume that you understood it. 24 Do you understand that direction, sir? 25 A. Yes.</p>	<p style="text-align: right;">Page 134</p> <p>1 Metoprolol -- 2 A. Yes, I did. 3 Q. -- this morning? 4 Did you take Paxil this morning? 5 A. Yes, I did. 6 Q. Are there any other medications that you 7 have taken today that I didn't just mention? 8 A. Yes. 9 Q. What medication? 10 A. Do you want the name or just tell you 11 what it is. It is a steroid. 12 Q. If you know the name, tell me the name, 13 but if you don't tell me what it's for. 14 A. It's just a steroid. I take it the day 15 before I go for chemo, which I am going to tomorrow, so I 16 take a steroid, Dexamethasone, something like that. I 17 don't know exactly what it is. 18 Q. Do you take any additional medication 19 other than that steroid this morning? 20 A. No, ma'am. 21 Q. Will you be taking your Flomax later 22 today? 23 A. Yes, I will. 24 Q. Did you take any pain medications today? 25 A. No, I didn't.</p>
<p style="text-align: right;">Page 133</p> <p>1 Q. Also, I ask you to verbalize all your 2 answers. The court reporter needs to take everything 3 down. 4 A. Okay. 5 Q. If you need a break at any time, please 6 let either David or myself know and you can have as many 7 breaks as you need throughout the day today. 8 A. Thank you. 9 Q. For our purposes here today, I don't 10 know is a perfectly acceptable answer. If you don't know 11 the answer to anything that I ask you, please tell me 12 that and we will move on to the next question, okay? 13 A. Okay. 14 Q. Do you understand those instructions, 15 sir? 16 A. Yes. 17 Q. Did you take your blood pressure 18 medication this morning? 19 A. Yes, I did. 20 Q. Did you take your Prilosec this morning? 21 A. Yes, I did. 22 Q. Did you take your folic acid this 23 morning? 24 A. Yes, I did. 25 Q. Did you take your, I believe it is,</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Do you believe that any of the medicines 2 that you have taken will affect your ability to testify 3 in any way? 4 A. No. I do not. 5 Q. Other than speaking with your attorney, 6 which I don't want to know anything about, did you do 7 anything else to prepare for today's deposition? 8 A. No. I did not. 9 Q. Did you look at any documents? 10 A. No. I did not. 11 Q. Did you look at any pictures? 12 A. No. I did not. 13 Q. I want to take you back to your work 14 history. That's where we are going to pick up today. 15 A. Okay. 16 Q. I believe last time you said that you 17 worked for a company by the name of Triple M. Is that 18 correct? 19 A. That is correct. 20 Q. Where were they located? 21 A. I think the address is 229 West 29th 22 Street, Manhattan. 23 Q. What year or years did you work for 24 Triple M? 25 A. After Ross. I don't remember what the</p>

3 (Pages 132 to 135)

Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

<p style="text-align: right;">Page 144</p> <p>1 A. Yes. Peter Mandelkern (phonetic). He's 2 a principal. 3 Do you want all of them? 4 Q. Just list them, please? 5 A. Karen Targof (phonetic), again, another 6 principal. 7 Q. Okay? 8 A. Herb Ruder (phonetic), Mark Siegel, Lori 9 Nordstrom. I have to think about this, Elizabeth Conti. 10 I think that is it. 11 Q. Okay. 12 How long had you planned to continue 13 working? 14 A. Until I died. 15 Q. Did you have any plans for retirement at 16 any point? 17 A. No. 18 Q. Your Answers to Interrogatories reflect 19 that you did residential construction in and around the 20 New York City area. 21 Is this work that you did during a 22 specific time period? 23 A. Various. For all these jobs, certain 24 dates that I gave you in hindsight, you know, they may 25 not be exactly accurate because between a job here and</p>	<p style="text-align: right;">Page 146</p> <p>1 withdrawn. 2 Do you recall the first decade you 3 started to do this home improvement work? 4 A. I started to do home improvement work 5 when I was about 15-years old. 6 Q. When is the last time you did any of 7 this type of work? 8 A. Maybe a year ago. 9 Q. I just want to make sure that I 10 understand what you are saying. 11 You can't recall any specific job site 12 locations where you did this work. Is that correct? 13 A. Correct. 14 Q. As you sit here today, you can't 15 remember any of the people that you did this work for or 16 any of the employers that you did this work for. Is that 17 correct? 18 A. Well, when you said "employers," I took 19 for granted you meant people that I was working for at 20 the time. 21 Q. Well, I am asking you. I am just trying 22 to find out -- 23 A. No. I really don't know. I don't know. 24 I could tell you what I did the last year or, you know, 25 two years ago or, you know -- that I could tell you.</p>
<p style="text-align: right;">Page 145</p> <p>1 there I might have taken off. I don't remember which 2 period, you know, which jobs. But, I have taken off, 3 like, two years, and I have done home improvements, and I 4 have done home improvements within the times that I was 5 working. Home improvements, I did it not only for the 6 extra money, but I did it because I really love to do it. 7 It was my pleasure. So, I would do a lot of jobs. I 8 didn't basically -- you know, I didn't have a specific 9 time. 10 Q. Do you recall the names of any of your 11 employers that you did home improvement work for? 12 A. Employers? 13 Q. Uh-hmm. 14 A. No. I didn't do -- I never -- I never 15 did a home improvement job for any of my employers for 16 money. In other words, if I had -- well, even at 17 Spectrum, if I worked at Spectrum, I know they had very, 18 very poor tables, you know, work facilities, so I built 19 tables. 20 Q. Let me ask the question in a different 21 way, then. 22 Can you list for me any of the job site 23 locations where you did any improvement-type work? 24 A. No. 25 Q. Did you do this home improvement work --</p>	<p style="text-align: right;">Page 147</p> <p>1 But, you know, going back, I don't really remember. 2 Q. What type of work would you do? 3 A. I would do basements, kitchens, 4 renovations -- 5 (Interruption at door.) 6 MS. WAYNE: Off the record. 7 (A short recess was taken.) 8 Q. Sir, I had asked you what type of work 9 you did and I believe you said you did basements, 10 kitchens, renovations. 11 Did you do any other type of work? 12 A. Paint. I don't know. Just general 13 contracting, not major contracting. You know, I didn't 14 put additions on houses, but other than that. I did 15 demolition, you know, cleaning out. I told you, 16 finishing basements. 17 Q. Was this basically all renovation work 18 that you did? 19 A. Yes. 20 Q. Was any of it new construction? 21 A. No. They were all old, you know, 22 ripping down the old stuff and modernizing it. 23 Q. Was this done in residential locations? 24 A. 99 percent of it was, yes. 25 Q. What was the other one percent? What</p>

6 (Pages 144 to 147)

Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

<p style="text-align: right;">Page 148</p> <p>1 was the location?</p> <p>2 A. I did a little work in somebody's</p> <p>3 factory, something like that.</p> <p>4 Q. So, one percent would be commercial</p> <p>5 locations?</p> <p>6 A. Yeah.</p> <p>7 Q. Would it be pretty much the same type of</p> <p>8 work in the commercial locations?</p> <p>9 A. Yes.</p> <p>10 Q. Do you believe you were exposed to</p> <p>11 asbestos in the course of doing any of this work?</p> <p>12 A. Positively.</p> <p>13 Q. Did you personally handle any</p> <p>14 asbestos-containing products?</p> <p>15 A. Yes.</p> <p>16 Q. What products did you personally handle?</p> <p>17 A. Well, I was always exposed to</p> <p>18 pipecovering because, you know, boiler wraps, pipe</p> <p>19 coverings, old ceilings. You know, the Celotex ceilings,</p> <p>20 Armstrong. Not only did I put up myself, but the stuff</p> <p>21 that was there that we ripped down, so I know that, you</p> <p>22 know -- now, I know it. In fact, when you rip it down,</p> <p>23 you know, it gets dusty, dirty. That's what -- I guess</p> <p>24 that's what just did me in.</p> <p>25 Q. The pipecovering products, did you</p>	<p style="text-align: right;">Page 150</p> <p>1 my career or midway through my career, I put</p> <p>2 pipecoverings on, but not asbestos. You know, we would</p> <p>3 be running pipes and just cover it with a plastic or</p> <p>4 whatever the hell it is made of. I don't know what it is</p> <p>5 made of.</p> <p>6 Q. What did the old pipecovering look like?</p> <p>7 A. The old pipecovering looked like -- it</p> <p>8 looked like a cast. Sometimes it had the strap around</p> <p>9 it. Other times, it was just the plastic cast.</p> <p>10 Q. What color was it?</p> <p>11 A. I guess it was white. I remember white.</p> <p>12 You know, it could have been beige. I really don't know.</p> <p>13 White is as I remember it, and half the time it was,</p> <p>14 like, a hundred years old and it was dirty. So, as far</p> <p>15 as I know, it was white.</p> <p>16 Q. The boiler wrap product, do you know</p> <p>17 what the brand name, trade name or manufacturer name of</p> <p>18 what that product was?</p> <p>19 A. I have not a clue.</p> <p>20 Q. What did it look like?</p> <p>21 A. Again, it looked like somebody took clay</p> <p>22 or plaster and packed the boiler.</p> <p>23 Q. Was it sort of a molded-on product?</p> <p>24 A. Molded-on, you mean smooth?</p> <p>25 Q. Not necessarily smooth, but --</p>
<p style="text-align: right;">Page 149</p> <p>1 personally handle that product?</p> <p>2 A. Partially, yes.</p> <p>3 Q. And you said pipe covering and boiler</p> <p>4 wraps.</p> <p>5 Are those two separate products or is</p> <p>6 that the same product?</p> <p>7 A. I don't know the consistency of what the</p> <p>8 product is. All I know is, like, if I redid a job and I</p> <p>9 had to remove the pipe wraps, you know, the -- that would</p> <p>10 be it, that's asbestos. I know now. Again, like a</p> <p>11 boiler wrap. When I say "a boiler wrap," it's the cast</p> <p>12 around the boiler and the pipes. You know, it's like a</p> <p>13 cast on your foot. Again, I didn't know what it was</p> <p>14 then. I just ripped it.</p> <p>15 Q. The pipecovering, was that material</p> <p>16 already in place?</p> <p>17 A. Yes.</p> <p>18 Q. Did you know what the brand name, trade</p> <p>19 name or manufacturer name of that pipecovering product</p> <p>20 was?</p> <p>21 A. I really don't know.</p> <p>22 Q. Did you ever have to install new</p> <p>23 pipecovering?</p> <p>24 A. Later on. You know, I am going back to</p> <p>25 the beginning of my so-called career. Towards the end of</p>	<p style="text-align: right;">Page 151</p> <p>1 withdrawn.</p> <p>2 What color was it?</p> <p>3 A. What color was it?</p> <p>4 I think, again, it was light colored. I</p> <p>5 don't know. I would have to say white. I couldn't swear</p> <p>6 to it, beige, white, like, a lightish color.</p> <p>7 Q. Did you ever have to personally handle</p> <p>8 that product?</p> <p>9 A. Yes.</p> <p>10 Q. What did you do with it?</p> <p>11 A. Broke it up. You know, I had to break</p> <p>12 it up to take -- like, if we had to remove a boiler or</p> <p>13 something or remove certain portions of it to remodel, I</p> <p>14 had to break up that portion.</p> <p>15 Q. You said that you were exposed to</p> <p>16 asbestos as a result of old ceilings.</p> <p>17 Specifically, what about the old ceiling</p> <p>18 are you referring to?</p> <p>19 A. Well, many times I had to rip down a</p> <p>20 ceiling that was leaking. You know, it was</p> <p>21 deteriorating. It was breaking apart. I had to rip that</p> <p>22 down to replace it, which is, you know, very dirty, and</p> <p>23 putting up new ceilings. Even putting up new ceilings,</p> <p>24 you put up a Celotex or an Armstrong ceiling and you have</p> <p>25 got to cut them.</p>

7 (Pages 148 to 151)

Helfand v. Asbestos
January 29, 2007

Harvey Helfand
II

<p style="text-align: right;">Page 256</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, Kerry D. Halpern, Shorthand Reporter,</p> <p>4 certify;</p> <p>5 That the foregoing proceedings were taken</p> <p>6 before me at the time and place therein set forth, at</p> <p>7 which time the witness was put under oath by me;</p> <p>8 That the testimony of the witness and all of</p> <p>9 the objections made at the time of the examination were</p> <p>10 recorded stenographically by me and were thereafter</p> <p>11 transcribed;</p> <p>12 That the foregoing is a true and correct</p> <p>13 transcript of my shorthand notes so taken.</p> <p>14 I further certify that I am not a relative or</p> <p>15 employee of any attorney or of any of the parties, nor</p> <p>16 financially interested in the action.</p> <p>17 I declare under penalty of perjury under the</p> <p>18 laws of the State of New York that the foregoing is true</p> <p>19 and correct.</p> <p>20 Dated this 29th day of January, 2007.</p> <p>21</p> <p>22</p> <p>23 KERRY D. HALPERN, Shorthand Reporter</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 258</p> <p>1 REPORTER'S CERTIFICATION OF CERTIFIED COPY</p> <p>2</p> <p>3 I, KERRY D. HALPERN, Shorthand Reporter in the</p> <p>4 State of New York, certify that the foregoing pages 124</p> <p>5 through 256, constitute a true and correct copy of the</p> <p>6 original deposition of HARVEY HELFAND, taken on January</p> <p>7 29, 2007.</p> <p>8 I declare under the penalty of perjury under</p> <p>9 the laws of the State of New York that the foregoing is</p> <p>10 true and correct.</p> <p>11 Dated the 29th day of January, 2007.</p> <p>12</p> <p>13</p> <p>14 KERRY D. HALPERN, Shorthand Reporter</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 257</p> <p>1 STATE OF)</p> <p>2 COUNTY OF) SS.</p> <p>3</p> <p>4</p> <p>5 I, the undersigned, declare under penalty of</p> <p>6 perjury that I have read the foregoing transcript, and I</p> <p>7 have made any corrections, additions, or deletions that I</p> <p>8 was desirous of making; that the foregoing is a true and</p> <p>9 correct transcript of my testimony contained therein.</p> <p>10</p> <p>11</p> <p>12 EXECUTED this _____ day of _____, 2007, at</p> <p>13 _____</p> <p>14 City State</p> <p>15</p> <p>16</p> <p>17 WITNESS:</p> <p>18 HARVEY HELFAND</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

34 (Pages 256 to 258)

Exhibit C

From: Laraine Brokaw [pacheco18@comcast.net]
Sent: Monday, June 04, 2007 11:54 AM

Subject: Trial Assignments

Because of time constraints for Tuesday's Designation Conference, Judge Freedman has asked me to notify all attorneys of trial assignments by email.

Weltz May 2007 Mesothelioma cases to Judge Madden Status Conference June 15, 2 pm

Bianco
Director
Felton
Helfand
Holinka -- case may not be tried until August 2007 Nachl Ritzer Saccamano Sheppard

Weltz May 2007 Lung Cancer cases to Judge York (date TBA) Alexander Sherman

I HAVE INVESTIGATED EVERY ALLEGED DISCOVERY ISSUE AND I BELIEVE DISCOVERY IS
LARGELY COMPLETE OR CAN BE COMPLETED WITHIN A SHORT TIME. FEEL FREE TO RAISE ANY
ADDITIONAL ISSUES WITH THE TRIAL JUDGE.

Early & Strauss May 2007 cases to Judge Freedman Date TBA

Cohen
Kimball
Litherland

Early & Strauss August 06 and February 07 FIFO cases to Judge Freedman Date TBA

Belluck & Fox May 2007 cases to Judge Kornreich Status Conference June 15, 10 am

Corbin, Elaine
Craney, Daniel
Holmes, Roger
Horsham, Donald J.
O'Brien, William
Puleo, Benjamin
Ringel, Isidore
Saronka, Alfred R.
Soria, Michael R.
Valentine, Robert

BY THIS EMAIL I AM ASKING EARLY & STRAUSS, BELLUCK & FOX AND WEITZ & LUXENBERG TO
PROVIDE THE FULL NAME AND INDEX NUMBERS OF ALL REFERENCED CASES TO TOM SCHIEL SO
THAT HE MAY ARRANGE FOR IMMEDIATE TRANSFER OF THE CASES

NOTE: FOR FUTURE CLUSTERS, JUDGE FREEDMAN PLANS TO ASSIGN CASES TO JUDGES
ACCORDING TO THE SCHEDULE SET FORTH IN THE CMO -- MAY CASES IN MAY, NOVEMBER
CASES IN NOVEMBER, RATHER THAN WAIT FOR THE DESIGNATION CONFERENCE A MONTH
LATER. THIS WILL HELP THE MANY DEFENDANTS WHO TELL ME THAT THEY ARE UNABLE TO GET
ANY AUTHORITY TO SETTLE UNTIL THE CASE IS ASSIGNED TO A JUDGE. PLAN TO COMPLETE
YOUR DISCOVERY ACCORDINGLY.